

II. JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA citizen suit provision) and 28 U.S.C. § 1331 (federal question).

III. VENUE

3. Venue in this Court is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

IV. PARTIES

4. Plaintiff, Ashvin Dhiren Gandhi, is an individual that, at all times relevant herein, has resided in Cambridge, Massachusetts.

5. Defendant Centers for Medicare and Medicaid Services is a federal agency of the United States, and a sub-component of the United States Department of Health & Human Services, and as such, is an agency subject to the FOIA, pursuant to 5 U.S.C. § 552(f).

V. LEGAL FRAMEWORK OF FOIA

6. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request for records that reasonably describes the nature of the records sought, and which conform with agency regulations and procedures in requesting such records. 5 U.S.C. § 552(a)(3)(A).

7. FOIA requires federal agencies to make a final determination on all FOIA requests that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such request, unless the agency expressly provides

notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(I).

8. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

9. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See* 5 U.S.C. § 552(a)(6)(C).

10. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

11. Under FOIA, the federal agency has the burden to sustain its actions. 5 U.S.C. § 552(a)(4)(B).

12. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

VI. FACTUAL ALLEGATIONS

13. On or about September 14, 2018, Gandhi sent a FOIA request to the Centers for Medicare and Medicaid Services (CMS), seeking copies of the Payroll Based Journal database collected by the agency since October 1, 2015, to the present, and the data and variables employed by the CMS for this database system of records.

14. On or about September 20, 2018, Gandhi sent a follow-up email to the CMS, inquiring as to whether CMS had received his September 14, 2018, FOIA request.

15. On or about September 21, 2018, CMS sent an email to Gandhi, indicating that CMS had received his September 14, 2018, FOIA request, and had assigned it as FOIA control number 091420187030.

16. On or about October 17, 2018, Plaintiff Gandhi sent an email to CMS, requesting the agency provide an estimated date of completion for his September 14, 2018, FOIA request.

17. On or about October 18, 2018, CMS sent an email to Gandhi providing information as to the estimated search fee for processing his September 14, 2018 FOIA request.

18. On or about October 18, 2018, Gandhi sent a follow-up email to CMS, requesting the agency provide an explanation of their listed programming cost amount for responding to his FOIA request, and the formula or information used to determine that fee.

19. On or about October 18, 2018, CMS sent an email to Gandhi indicating that the agency could not provide Plaintiff with an explanation for their programming costs for processing this FOIA request.

20. On or about October 18, 2018, Gandhi sent another email to CMS, indicating his desire to seek a public interest fee waiver for this FOIA request, and requesting information from the agency on how to file a request for a fee waiver.

21. On or about October 18, 2018, CMS sent an email to Gandhi, responding to Mr. Gandhi's request for information on filing a fee waiver for his FOIA record request.

22. On or about October 18, 2018, Gandhi sent an email to CMS with his request for a public interest fee waiver for his September 14, 2018, FOIA request.

23. On or about October 22, 2018, CMS sent an email to Gandhi, with an attached letter indicating that although the search for responsive records to his September 14, 2018, FOIA request had begun, the agency needed additional information for evaluating his fee waiver request.

24. On or about October 22, 2018, Gandhi sent an email to CMS, once again requesting information on how the agency calculated the estimates for the costs of duplication and generating records for this record request.

25. On or about October 22, 2018, CMS sent an email to Gandhi indicating that it was in the process of obtaining the information which he had requested pertaining to how the agency estimated their duplication costs for this record request from agency staff.

26. On or about October 30, 2018, Gandhi sent an email to CMS, requesting a specific breakdown of the agency costs for processing this FOIA request, as well as requesting an extension of time to pay any applicable processing fees.

27. On or about October 30, 2018, CMS sent an email to Gandhi indicating that it was still waiting on information from their staff regarding the methodology which the agency had used to provide the estimated the costs of processing his FOIA request.

28. On or about October 30, 2018, Gandhi sent an email to CMS inquiring whether the agency would extend its deadline to pay the processing fees.

29. On or about October 31, 2018, CMS sent an email to Gandhi that contained some information as to how the agency estimated their processing fees.

30. On or about October 31, 2018, Gandhi sent an email to CMS requesting further clarification of the agency's process for calculating fees, as well as a further inquiry into whether the agency would extend its deadline to pay processing fees. In addition, Gandhi also requested that his attorney, Bradley Abruzzi, be included in the agency's communications regarding this FOIA request matter.

31. On or about November 2, 2018, Gandhi sent an amended fee waiver request via email to CMS, along with supporting documentation for his requested fee waiver.

32. On or about November 14, 2018, Gandhi sent a follow up email to CMS, inquiring as to whether the agency had received his supplemental fee waiver information.

33. On or about November 14, 2018, CMS sent an email notification to Gandhi,

confirming that his fee waiver request had been approved for his September 14, 2018, FOIA request.

34. On or about November 20, 2018, CMS sent an email to Gandhi, informing him that the records he was requesting from his September 14, 2018, FOIA request were allegedly publicly available.

35. On or about November 20, 2018, Gandhi sent an email to CMS, explaining to the agency that it was not just the database records that he was requesting, but also the collected data and variables employed by CRS in developing this database.

36. On or about November 30, 2018, Gandhi sent a follow-up email to CMS, requesting the status of his September 14, 2018, FOIA request.

37. On or about November 30, 2018, CMS sent an email to Gandhi, indicating that the agency was still processing this record request.

38. On or about December 13, 2018, Gandhi sent an email to CMS, once again requesting a status update on his September 14, 2018, FOIA request.

39. On or about December 13, 2018, CMS sent an email to Gandhi, indicating that the agency was still processing his September 14, 2018, FOIA request.

40. On or about January 8, 2019, Gandhi sent another email to CMS, once again inquiring as to the status of his September 14, 2018, FOIA request.

41. On or about January 9, 2019, CMS sent an email to Gandhi informing him that the agency was still processing this record request.

42. On or about January 9, 2019, Gandhi sent another email to CMS, requesting the expected completion date of his September 14, 2018, FOIA request.

43. On or about January 10, 2019, CMS sent an email to Gandhi indicating that the work on the request was still ongoing, and that there was not an estimated date of completion for his FOIA request.

44. On or about January 10, 2019, Gandhi sent another email to CMS, once again inquiring as to the status of his September 14, 2018, FOIA request.

45. On or about January 11, 2019, CMS sent an email to Gandhi stating that the agency was processing the request, and that it was not yet ready for release or disclosure.

46. On or about January 26, 2019, Gandhi sent an email to CMS requesting a phone call with someone in the agency to better understand how the records which he had requested were being generated.

47. On or about February 11, 2019, Gandhi sent another email to CMS, once requesting an update on the status of his FOIA request.

48. On or about February 11, 2019, CMS sent an email to Gandhi stating that the agency was still processing the request, and that it anticipated that within a week it would be able to begin reviewing the records for disclosure.

49. On or about February 25, 2019, Gandhi sent an email to the CMS FOIA office, asking if their office had received the responsive records for his record request, and whether there was an estimated time for completion of processing this FOIA request.

50. On or about February 25, 2019, CMS sent an email to Gandhi indicating that the responsive records to his FOIA request had been received by their office, and that they were currently being reviewed for disclosure. Additionally, the agency indicated that it did not have an estimated time frame for their completion of the processing this FOIA request.

51. On or about March 8, 2019, Gandhi sent another email to CMS, once again requesting a status update for his September 14, 2018, FOIA request.

52. On or about March 14, 2019, Gandhi sent another email to CMS, once again requesting a status update for his September 14, 2018, FOIA request.

53. On or about April 10, 2019, CMS sent an email to Gandhi indicating that the FOIA Government Information Specialist that had been working on his FOIA request, Ms. Doris Davis, was no longer assigned to his case.

54. On or about April 25, 2019, Gandhi sent an email to CMS, once again requesting information as to the status of his September 14, 2018, FOIA request.

55. On or about April 27, 2019, Gandhi sent another email to the CMS FOIA office, requesting a status update on his record request, and noting that he had also left two voice mails for the agency, requesting the status of his September 14, 2018, FOIA request, and had not ever heard back from the agency in response to those phone calls.

56. As of the date of filing this action, Plaintiff has not received any agency decision, nor any records responsive to his September 14, 2018, FOIA request to CMS.

VII. CLAIMS FOR RELIEF

57. Gandhi realleges, as if fully set forth herein, paragraphs 1-56 previously set forth above.

58. Defendant CMS has violated FOIA by failing to provide Gandhi with all non-exempt responsive records for his September 14, 2018, FOIA request.

59. By failing to provide Gandhi with all non-exempt responsive record to his September 14, 2018, FOIA request, Defendant CMS has denied Gandhi's right to this information as provided by the Freedom of Information Act.

60. Defendant CMS has also violated FOIA by failing to perform an adequate search, reasonably calculated to locate all responsive records to Plaintiff's September 14, 2018, FOIA request.

61. By failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's September 14, 2018, FOIA request, Defendant CMS has denied Gandhi's right to this information, as provided by law under the Freedom of Information Act.

62. Unless enjoined by this Court, Defendant CMS will continue to violate Gandhi's legal rights to be timely provided with copies of the records which he has requested in his September 14, 2018, FOIA request described above.

63. Gandhi is directly and adversely affected and aggrieved by Defendant CMS's failure to provide responsive records to his September 14, 2018, FOIA request.

64. Gandhi has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

65. Gandhi is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for Gandhi, providing the following relief:

1. Declare Defendant CMS has violated FOIA by failing to provide Gandhi with all non-exempt records responsive to his September 14, 2018, FOIA request.
2. Declare Defendant CMS has violated FOIA by failing to complete an adequate search for records responsive to Gandhi's September 14, 2018, FOIA request.
3. Direct by injunction that Defendant CMS perform an adequate search for records responsive to Plaintiff Gandhi's September 14, 2018, FOIA request, and provide Plaintiff with all non-exempt responsive records to this FOIA request.
4. Grant Gandhi's costs of litigation, including reasonable attorney fees, as provided by FOIA, 5 U.S.C. § 552(a)(4)(E); and,
5. Provide such other relief as the Court deems just and proper.

DATED: This 11th day of June, 2019.

Respectfully submitted,

/s/
Daniel J. Stotter (WI0015)

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